

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 20-CR-365(MKB)

Plaintiff, :

-against- : United States Courthouse

J&F INVESTIMENTOS SA, : Brooklyn, New York

Defendant. : October 14, 2020

: 10:30 o'clock a.m.

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TRANSCRIPT OF PLEADING BY VIDEOCONFERENCE  
BEFORE THE HONORABLE MARGO K. BRODIE  
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Government: SETH D. DuCHARME  
Acting United States Attorney  
BY: DAVID GOPSTEIN  
Assistant United States Attorney  
271 Cadman Plaza East  
Brooklyn, New York

U.S. DEPARTMENT OF JUSTICE  
Criminal Division - Fraud Section  
BY: MICHAEL HARPER  
JOSEPH McFARLANE

For the Defendant: QUINN EMANUEL URQUHART & SULLIVAN  
1301 I Street, N.W.  
Washington, D.C. 20005

BY: BEN A. O'NEIL, ESQ.

Court Reporter: Charleane M. Heading  
225 Cadman Plaza East  
Brooklyn, New York  
(718) 613-2643

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 THE CLERK: Criminal cause for pleading, docket  
2 number 20-CR-365.

3 As a reminder to everyone on the line, persons  
4 granted access to proceedings are reminded of the general  
5 prohibit against photographing, recording and rebroadcasting  
6 of court proceedings. Violation of these prohibitions may  
7 result in sanctions including removal of court issued media  
8 credentials, restricted entry to future hearings, denial of  
9 entry to future hearings or any other sanctions deemed  
10 necessary by the Court.

11 Counsel, starting with the government, please state  
12 your names for the record.

13 MR. GOPSTEIN: Good morning, Your Honor. David  
14 Gopstein for the government and I'm joined on the phone by my  
15 colleagues Michael Harper and Joseph McFarlane from the Fraud  
16 Section in DC.

17 THE COURT: Good morning to all of you.

18 MR. O'NEIL: Good morning, Your Honor. This is Ben  
19 O'Neil, Quinn Urquhart & Sullivan. With me --

20 THE COURT: Good morning.

21 MR. O'NEIL: -- is a representative of my client --  
22 with me is a representative of my client, Lucio Martins, who  
23 is the director of legal and compliance for J&F Investimentos.

24 THE COURT: Okay. Good morning, Mr. O'Neil, and  
25 good morning, Mr. Martins.

1           Mr. O'Neil, I understand that your client wishes to  
2 waive indictment and plead guilty to an information. Is that  
3 correct?

4           MR. O'NEIL: That is correct, Your Honor.

5           THE COURT: Before I proceed today, I need to first  
6 make sure that Mr. Martins, who is appearing on behalf of the  
7 defendant, is an officer or authorized employee of the  
8 defendant.

9           MR. MARTINS: I am authorized.

10          MR. O'NEIL: He is, Your Honor.

11          THE COURT: Is the board of directors of the  
12 defendant empowered to authorize him to waive indictment and  
13 to enter a guilty plea to the charge in the information?

14          MR. MARTINS: Yes, Your Honor.

15          THE COURT: And are you authorized by a valid  
16 resolution to waive indictment and enter a guilty plea to the  
17 charge?

18          MR. MARTINS: Yes, Your Honor.

19          THE COURT: Is the defendant financially able to pay  
20 a substantial fine that could be imposed for the charge to  
21 which it is seeking to plead guilty?

22          MR. MARTINS: Yes, Your Honor.

23          THE COURT: Okay. I am satisfied that there is, in  
24 fact, a proper representative before the Court.

25          Now, because we are proceeding by video, I need to

1 make certain findings on the record.

2 Pursuant to the Coronavirus Aid Relief and Economic  
3 Securities Act, the CARES Act, Chief Judge Mauskopf has issued  
4 an Administrative Order finding that emergency conditions due  
5 to the COVID-19 virus outbreak and the need to protect public  
6 health and safety continue to materially affect the  
7 functioning of the courts in this district.

8 She acknowledges that while the court has begun to  
9 conduct in-person proceedings, judges and court staff as well  
10 as attorneys and staff of the United States Attorneys' Office  
11 for the Eastern District of New York and Federal Defenders of  
12 New York continue to work remotely. She notes that these  
13 conditions among others make it necessary for judges in this  
14 district to continue to conduct criminal proceedings remotely  
15 by videoconference or teleconference.

16 She concluded that it remains necessary to invoke  
17 the provisions of the CARES Act and specifically found that  
18 felony pleas under Rule 11 of the Federal Rules of Criminal  
19 Procedure and felony sentences under Rule 32 of the Federal  
20 Rules of Criminal Procedure cannot be conducted in person  
21 without seriously jeopardizing public health and safety.

22 The parties have requested that the waiver of  
23 indictment, the plea hearing and the sentencing of the  
24 defendant proceed by videoconference today.

25 Under the Administrative Order, felony pleas and

1 sentences may be conducted by video or telephone if the  
2 defendant consents and if the judge in each individual case  
3 finds for specific reasons that felony pleas or sentences in  
4 those cases cannot be further delayed without serious harm to  
5 the interest of justice.

6 Mr. Martins, do you consent to proceeding by video  
7 today?

8 MR. MARTINS: Yes, I do.

9 THE COURT: I find that due to the global COVID-19  
10 pandemic, a felony plea pursuant to the Federal Rules of  
11 Criminal Procedure 11 and sentencing pursuant to Rule 32 of  
12 the Federal Rules of Criminal Procedure cannot be conducted in  
13 person without seriously jeopardizing the health and safety of  
14 the public and considering the defendant's decision to waive  
15 indictment, plead guilty and be sentenced, and because of the  
16 nature of the plea and sentence in this case, indefinite delay  
17 of the plea or sentence may result in serious harm to the  
18 interest of justice. Therefore, with defendant's consent  
19 after consultation with counsel, I find that a plea hearing  
20 and sentencing proceeding by videoconference is warranted in  
21 this case.

22 MR. MARTINS: Yes, Your Honor.

23 THE COURT: Mr. Martins, your attorney advises me  
24 that the defendant wishes to waive indictment and plead guilty  
25 to the information in which it is charged in this case.

1           These are serious decisions and I must be certain  
2   that the waiver of indictment and plea of guilty are being  
3   made with a full understanding of the defendant's rights and  
4   the consequences of those decisions. In addition to  
5   explaining the right defendant will be giving up by waiving  
6   indictment and pleading guilty, there are a number of  
7   questions that I must ask you as the representative of the  
8   defendant to establish that the defendant is acting knowingly  
9   and voluntarily.

10           Mr. Martins, if you do not understand any of my  
11   questions, please say so and I will reword the question.

12           MR. MARTINS: Yes, Your Honor.

13           THE COURT: If at any time you would like to consult  
14   with your attorney for any reason, please let me know and I  
15   will give you as much time as you need to do so.

16           I do need you to answer my questions under oath and  
17   so I am going to have Ms. Valentin administer the oath.

18           THE CLERK: Please raise your right hand.

19           THE COURT: Mr. Martins, you need to raise your  
20   right hand.

21           (The defendant representative is duly sworn/affirmed  
22   by the Clerk of Court under penalties of perjury.)

23           THE CLERK: Please state your name for the record.

24           MR. MARTINS: Yes.

25           THE COURT: Can you state your name, Mr. Martins,

1 your full name.

2 MR. MARTINS: Lucio Batista Martins.

3 THE COURT: Counsel, does your client need an  
4 interpreter or is he fluent in English?

5 MR. O'NEIL: He's fluent in English, Your Honor.

6 THE COURT: Thank you.

7 Mr. Martins, were you and the board of directors of  
8 defendant provided a copy of the information, that is the  
9 document containing the charge made against the defendant in  
10 this case?

11 MR. MARTINS: Yes, Your Honor.

12 THE COURT: Have you and the board of directors  
13 fully discussed the charge as well as the case in general with  
14 your attorneys?

15 MR. MARTINS: Yes, Your Honor.

16 THE COURT: Does the defendant understand that it  
17 has been charged with conspiracy to violate the anti-bribery  
18 provisions of the Foreign Corrupt Practices Act?

19 MR. MARTINS: Yes, it does.

20 THE COURT: Instead of an indictment, this felony  
21 charge has been brought by the filing of an information by the  
22 Acting United States Attorney for the Eastern District of  
23 New York and the Acting Chief of the Fraud Section of the  
24 Criminal Division of the U.S. Department of Justice.

25 The defendant has a constitutional right to be

1 charged by an indictment returned by a grand jury but the  
2 defendant can waive that right and consent to being charged by  
3 information.

4 Unless the defendant waives indictment, the  
5 defendant may not be charged with a felony unless a grand jury  
6 finds by return of an indictment that there is probable cause  
7 to believe that a crime has been committed and that the  
8 defendant committed the crime. If the defendant does not  
9 waive indictment, the government must present a case to the  
10 grand jury and ask the grand jury to indict the defendant in  
11 order for the defendant to be charged with this felony  
12 offense.

13 Do you understand?

14 MR. MARTINS: Yes, Your Honor, we understand.

15 THE COURT: A grand jury is comprised of at least 16  
16 and not more than 23 persons and at least 12 grand jurors must  
17 find that there is probable cause to believe that the  
18 defendant committed the crime with which it is charged before  
19 the defendant may be indicted. The grand jury might or it  
20 might not indict the defendant. If, however, the defendant  
21 waives indictment by the grand jury, the case will proceed  
22 against the defendant on the information just as though  
23 defendant had been indicted.

24 Mr. Martins, does defendant understand the right to  
25 indictment by a grand jury?

1 MR. MARTINS: Yes, Your Honor.

2 THE COURT: Is defendant willing to waive that  
3 right?

4 MR. MARTINS: Yes.

5 THE COURT: Have you and the board of directors  
6 discussed this decision with defendant's attorney?

7 MR. MARTINS: Yes, we had the discussion,  
8 Your Honor.

9 THE COURT: Have any threats or promises been made  
10 to induce the defendant to waive its right to indictment by  
11 grand jury?

12 MR. MARTINS: No, Your Honor.

13 THE COURT: Is defendant waiving its right to  
14 indictment voluntarily and of its own free will?

15 MR. MARTINS: Yes, Your Honor.

16 THE COURT: Mr. O'Neil, are you aware of any reason  
17 that defendant should not waive indictment?

18 MR. O'NEIL: No, I'm not, Your Honor.

19 THE COURT: I find that the defendant's waiver of  
20 indictment is known and voluntarily made and I accept the  
21 waiver.

22 Mr. Martins, would you like me to read the  
23 information or do you on behalf of the defendant waive reading  
24 of the information?

25 MR. MARTINS: Your Honor, I can do it and if you

1 have any difficulty with my accent or my English, please let  
2 me know.

3 THE COURT: No, I'm asking you if you would like me  
4 to read you the information.

5 MR. MARTINS: Oh, sorry.

6 THE COURT: Or whether you are waiving the reading  
7 of the information.

8 MR. MARTINS: Sorry.

9 THE COURT: Your accent is perfectly fine. I  
10 understand you clearly.

11 MR. MARTINS: Okay. So if you can, I prefer. Thank  
12 you.

13 THE COURT: Counsel, would you like me to read the  
14 information or do you waive the reading of the information?

15 MR. O'NEIL: So we're happy to waive reading of the  
16 information.

17 THE COURT: Okay. Mr. Martins, have you and the  
18 board of directors had sufficient time to discuss with your  
19 attorneys whether or not to plead guilty?

20 MR. MARTINS: Yes, Your Honor.

21 THE COURT: Are you and the board of directors fully  
22 satisfied with the representation, the counsel and advice  
23 given to the defendant in this case by your attorneys?

24 MR. MARTINS: Yes, Your Honor.

25 THE COURT: Mr. O'Neil, have you discussed the

1 matter of pleading guilty with the board of directors of the  
2 defendant?

3 MR. O'NEIL: Through Mr. Martins, Your Honor.

4 THE COURT: And does the defendant understand the  
5 rights it will be waiving by pleading guilty?

6 MR. O'NEIL: Yes, it does, Your Honor.

7 THE COURT: Have you advised the defendant of the  
8 maximum and minimum fine that could be imposed and any other  
9 potential penalties including probation?

10 MR. O'NEIL: I have, Your Honor.

11 THE COURT: I am now going to discuss with you the  
12 rights that the defendant will be waiving by pleading guilty.

13 Mr. Martins, the defendant has a right to continue  
14 to plead not guilty. No person or entity can be forced to  
15 plead guilty. If defendant persisted in its not guilty plea,  
16 it would have a right under the constitution and laws of the  
17 United States to a speedy and public trial by a jury. At  
18 trial, the defendant would be presumed to be innocent and the  
19 government would have to prove the defendant's guilt beyond a  
20 reasonable doubt. Defendant would have the right to the  
21 assistance of counsel for its defense and would have the right  
22 to see and hear all witnesses and have them cross-examined in  
23 its defense. The defendant would also have the right to  
24 compel the attendance of witnesses to testify in its defense.

25 Do you understand?

1 MR. MARTINS: Yes, Your Honor, we understand.

2 THE COURT: Should the defendant decide not to put  
3 on any evidence at trial, the fact that it did not do so could  
4 not be used against it at trial. By entering a plea of guilty  
5 and if I accept the defendant's plea, there will be no trial  
6 and the defendant will have waived its right to a trial as  
7 well as all those rights associated with a trial as I have  
8 just described them.

9 Do you understand?

10 MR. MARTINS: Yes, Your Honor.

11 THE COURT: There will be no further trial of any  
12 kind and no right of appeal from the judgment of guilty. I  
13 will simply enter a judgment of guilt on the basis of  
14 defendant's guilty plea.

15 Do you understand?

16 MR. MARTINS: Yes, Your Honor, we understand.

17 THE COURT: If defendant pleads guilty, I will have  
18 to ask you questions about what the defendant did in order to  
19 satisfy myself that the defendant is, in fact, guilty of the  
20 charge to which it seeks to plead guilty.

21 If you answer my questions about the offense under  
22 oath on the record and in the presence of counsel, the answers  
23 may later be used against you, Mr. Martins, as the  
24 representative of the defendant in a prosecution for perjury  
25 or false statement.

1 Do you understand?

2 MR. MARTINS: Yes, Your Honor.

3 THE COURT: Mr. Martins, does the defendant  
4 understand each and every one of the rights I have explained  
5 to you?

6 MR. MARTINS: Yes, Your Honor, we understand.

7 THE COURT: Is the defendant willing to give up its  
8 right to trial and all those rights I have just discussed with  
9 you?

10 MR. MARTINS: Yes, Your Honor.

11 THE COURT: I understand that the defendant is  
12 pleading guilty pursuant to an agreement with the government.  
13 I have been provided the original agreement with several  
14 attachments, A through E, and I have caused it to be marked as  
15 Court Exhibit 1.

16 Mr. Martins, did you sign the agreement on behalf of  
17 the defendant?

18 MR. MARTINS: Yes, Your Honor.

19 THE COURT: And is that your signature on page 24 of  
20 the agreement?

21 MR. MARTINS: Yes, Your Honor.

22 THE COURT: Did you and the board of directors  
23 discuss the agreement with your attorney before you signed it?

24 MR. MARTINS: We discussed it. The board of  
25 directors discussed the agreement with me and I had discussion

1 with my attorney.

2 THE COURT: And did you and the board of directors  
3 have sufficient time to review it with counsel? And I  
4 understand that this was done through you.

5 MR. MARTINS: Yes, Your Honor.

6 THE COURT: Did you have sufficient time?

7 MR. MARTINS: Yes.

8 THE COURT: Counsel, did you have sufficient time to  
9 review the agreement with your client?

10 MR. O'NEIL: I did, Your Honor.

11 THE COURT: Mr. Martins, do you have any questions  
12 about the agreement?

13 MR. MARTINS: No, Your Honor.

14 THE COURT: Does the agreement represent defendant's  
15 entire understanding with the government?

16 MR. MARTINS: Yes, Your Honor.

17 THE COURT: Has anyone made any promise or assurance  
18 that is not in the agreement to persuade the defendant to  
19 accept the agreement?

20 MR. MARTINS: No, Your Honor.

21 THE COURT: Has anyone threatened the defendant in  
22 any way to persuade it to accept the agreement?

23 MR. MARTINS: No, Your Honor.

24 THE COURT: Mr. O'Neil, were all formal plea offers  
25 from the government conveyed to the defendant?

1 MR. O'NEIL: They were, Your Honor.

2 THE COURT: Mr. Martins, I am now going to discuss  
3 the possible consequences of the plea, first, the elements of  
4 the offense to which defendant seeks to plead guilty.

5 On pages 2 to 3 of the agreement, it details the  
6 elements of the offense of conspiracy to violate the  
7 anti-bribery provisions of the Foreign Corrupt Practices Act.

8 Would you like me to review with you the elements of  
9 the offense, Mr. Martins?

10 MR. MARTINS: No, Your Honor.

11 THE COURT: Does the government wish the Court to  
12 review the elements?

13 MR. GOPSTEIN: Your Honor, I believe referencing  
14 pages 2 through 3 which is in front of all of us is  
15 sufficient. Thank you.

16 THE COURT: Mr. Martins, did you and the board  
17 review the elements of the offense as specified in the plea  
18 agreement?

19 MR. MARTINS: Yes, Your Honor.

20 THE COURT: And did you discuss those elements with  
21 your attorney, the attorney for the defendant?

22 MR. MARTINS: Yes, Your Honor.

23 THE COURT: And do you and the board understand the  
24 elements of the crime to which the defendant seeks to plead  
25 guilty?

1 MR. MARTINS: Yes, Your Honor.

2 THE COURT: I am now going to tell you about the  
3 possible penalties for the crime to which defendant will be  
4 pleading guilty.

5 The parties agree that the gross pecuniary gain  
6 resulting from the offense is \$178,122,935. The maximum  
7 possible fine based on that gain is twice the gross gain which  
8 is \$356,245,870. Defendant also faces five years of  
9 probation.

10 Is there any restitution here, Counsel?

11 MR. GOPSTEIN: No, Your Honor.

12 THE COURT: And the defendant faces a special  
13 assessment of \$400.

14 Mr. Martins, does defendant understand those  
15 possible consequences of its plea?

16 MR. MARTINS: Yes, Your Honor.

17 THE COURT: Under the Sentencing Reform Act of 1984,  
18 the United States Sentencing Commission issued guidelines for  
19 judges to follow in determining the sentence in a criminal  
20 case. These guidelines are advisory and ordinarily, I would  
21 consider them along with the particular facts and  
22 circumstances of your case and you, meaning the defendant, and  
23 all of the sentencing factors set forth in the federal statute  
24 18 U.S.C. Section 3553(a) in determining the appropriate  
25 sentence.

1 Have you and the board discussed with the attorneys  
2 how the advisory sentencing guidelines might apply to your  
3 case, Mr. Martins?

4 MR. MARTINS: Yes, Your Honor.

5 THE COURT: According to the plea agreement and,  
6 Mr. Gopstein, why don't you tell me what the specific advisory  
7 guideline range is. I believe it's contained in paragraph 21  
8 of the plea agreement.

9 MR. GOPSTEIN: It is, Your Honor. If I may just  
10 turn it over to my colleague Mr. Harper who is going to handle  
11 the guidelines and sentencing.

12 THE COURT: Sure.

13 Mr. Harper?

14 MR. HARPER: Good morning, Your Honor.

15 THE COURT: God morning.

16 MR. HARPER: As indicated in paragraph 21 of the  
17 plea agreement --

18 THE COURT: Can you speak up a little louder?

19 Can you speak a little louder, Mr. Harper?

20 MR. HARPER: Yes, Your Honor.

21 As indicated in paragraph 21 of the plea agreement,  
22 the Fraud Section and the Office and the company agree that  
23 the application of the United States Sentencing Guidelines is  
24 as follows.

25 The total offense level is 44. That is calculated

1 based on the fact that the base offense level for this  
2 violation is 12 and given the fact that multiple bribes were  
3 paid in furtherance of this conspiracy and the amount of bribe  
4 payments paid exceeded \$150 million and the conspiracy  
5 included high level government officials, pursuant to the  
6 guidelines, the total offense level is 44.

7 The culpability score is 8. That is calculated  
8 based on the fact that the base score here is 5.

9 J&F Investimentos has 5,000 or more employees. It is  
10 cooperating and accepting responsibility for its conduct.  
11 Pursuant to the guidelines, that results in a culpability  
12 score of 8.

13 The guidelines fine range here is calculated based  
14 on a base fine of \$178,122,935. The multiplier in this  
15 instance, the low end is 1.6, the high end is 3.2, which  
16 calculates to a total fine range of \$284,996,696 to a maximum  
17 fine of \$569,993,392.

18 THE COURT: Thank you, Mr. Harper.

19 Now, Mr. Martins, because of the nature of the plea,  
20 if I accept your guilty plea pursuant to the plea agreement, I  
21 will not apply the sentencing guidelines in determining your  
22 sentence.

23 Pursuant to paragraph 22 of the agreement with the  
24 government, both you and the government have agreed pursuant  
25 to Rule B of the Federal Rules of Criminal Procedure that a

1 total penalty or fine of \$256,497,026 is an appropriate  
2 sentence.

3 MR. MARTINS: Yes, Your Honor.

4 THE COURT: As the agreement acknowledges, this  
5 agreed upon sentence is 10 percent less than the bottom of the  
6 applicable advisory guidelines. If I accept your guilty plea,  
7 I must impose the agreed upon sentence.

8 Do you understand, however, Mr. Martins, that if I  
9 choose not to follow the terms of this agreement relating to  
10 the sentence of defendant, that I will give the defendant an  
11 opportunity to withdraw its guilty plea. If defendant chooses  
12 to withdraw its guilty plea, it can proceed to trial as it  
13 would have had it not chosen to plead guilty, however, if  
14 defendant chooses not to withdraw its guilty plea, I may then  
15 impose a more severe sentence than provided for in the plea  
16 agreement. In other words, I would not be bound by the terms  
17 of the plea agreement relating to defendant's sentence.

18 Do you understand?

19 MR. MARTINS: Yes, Your Honor.

20 THE COURT: The defendant can waive its right to  
21 appeal. Does the defendant understand that under some  
22 circumstances, it or the government may have the right to  
23 appeal any sentence that I impose, Mr. Martins?

24 MR. MARTINS: Yes, Your Honor.

25 THE COURT: But by entering into this agreement with

1 the government, the defendant has waived its right to appeal  
2 or otherwise challenge its conviction or sentence in this  
3 case. Does the defendant understand that?

4 MR. MARTINS: Yes, we understand, Your Honor.

5 THE COURT: Now, there are a number of other waivers  
6 in the agreement including waiving the right pursuant to  
7 Rule 11(f) of the Federal Rules of Criminal Procedure and the  
8 Federal Rules of Evidence 410.

9 You have also agreed to cooperate with the  
10 government. You also have an obligation to report evidence of  
11 allegations of conduct that may be a violation of the FCPA  
12 anti-bribery provision and you have also agreed to other  
13 reporting requirements as set forth in attachment D to the  
14 plea agreement.

15 Would the government like for the Court to review  
16 any other provisions of the agreement?

17 MR. GOPSTEIN: No, Your Honor. I believe that  
18 covers the main obligations under the agreement. Thank you.

19 THE COURT: Mr. Martins, do you have any questions  
20 about the rights that the defendant is giving up, the  
21 punishment that the defendant faces --

22 MR. MARTINS: No, Your Honor.

23 THE COURT: -- the plea agreement, the nature of the  
24 charges, the charge, rather, or anything else relating to this  
25 matter?

1 MR. MARTINS: No, Your Honor.

2 THE COURT: Are you prepared to plead guilty on  
3 behalf of the defendant?

4 MR. MARTINS: Yes, Your Honor.

5 THE COURT: Mr. O'Neil, do you know of any reason  
6 your client should not plead guilty at this time?

7 MR. O'NEIL: I don't, Your Honor.

8 THE COURT: As a reminder, Mr. Martins, the elements  
9 of the offense is set forth in pages 2 through 3 of the plea  
10 agreement.

11 What is the defendant's plea to the sole count of  
12 the information charging it with conspiracy to violate the  
13 anti-bribery provisions of the Foreign Corrupt Practices Act,  
14 guilty or not guilty?

15 MR. MARTINS: Guilty.

16 THE COURT: Is the defendant making this plea of  
17 guilty voluntarily and of its own free will?

18 MR. MARTINS: Yes, Your Honor.

19 THE COURT: Has anyone threatened or forced the  
20 defendant to plead guilty?

21 MR. MARTINS: No, Your Honor.

22 THE COURT: Other than the agreement with the  
23 government, has anyone made any promise that has caused  
24 defendant to plead guilty?

25 MR. MARTINS: No, Your Honor.

1 THE COURT: Other than as agreed to in the  
2 agreement, has anyone made any promise as to what the sentence  
3 will be?

4 MR. MARTINS: No, Your Honor.

5 THE COURT: I need to determine that there is a  
6 factual basis for the plea so Mr. Martins will have to tell me  
7 what the defendant did to make it guilty of the charge in the  
8 information.

9 Counsel, have the parties discussed how to proceed  
10 with the factual allocution?

11 MR. O'NEIL: We have, Your Honor. Mr. Martins has a  
12 statement he can make to the court.

13 THE COURT: Okay. Please proceed, Mr. Martins.

14 MR. MARTINS: Your Honor, in or about and between  
15 2005 and 2017, JMF, together with others, knowingly and  
16 willfully, willfully agreed to violate the FCPA by corruptly  
17 promising and paying bribes, bribes that it understood were to  
18 and for the benefit of foreign officials in Brazil to secure  
19 an improper advantage in order to retain and retain business  
20 for J&F, especially to ensure that instrumentalities of the  
21 Brazilian government would enter into financing and equity  
22 transition, transactions and other transactions benefiting  
23 J&F.

24 In connection with these bribes, J&F used a  
25 financial institution based in the United States. Some of,

1 some of the equity and financial transaction were used to  
2 purchase assets in the United States and J&F through its  
3 executives took, took acts in further, furtherance of this  
4 chain while present in New York.

5 THE COURT: Okay. Now, I believe you said that  
6 there were certain financial institutions in New York that  
7 were utilized for purposes of committing the conspiracy. Is  
8 that correct?

9 MR. MARTINS: Yes, Your Honor.

10 THE COURT: And that several individuals on behalf  
11 of defendant also purchased assets in the U.S., is that  
12 correct?

13 MR. MARTINS: Yes, Your Honor.

14 THE COURT: And that some acts were done in  
15 furtherance of the conspiracy within the United States, is  
16 that correct?

17 MR. MARTINS: Yes, Your Honor.

18 THE COURT: I am going to ask the government with  
19 regard to venue, can you tell me whether any of these acts  
20 were committed in the Eastern District of New York or is the  
21 defendant waiving venue?

22 MR. GOPSTEIN: Yes, Your Honor.

23 With regard to venue, there was travel through the  
24 Eastern District of New York to a number of meetings where  
25 acts were taken in furtherance of the conspiracy. In

1 addition, a number of the wires at issue traveled through the  
2 Eastern District. I would also add that venue is being waived  
3 pursuant to the plea agreement but for the reasons stated,  
4 there's sufficient venue in this case as well.

5 THE COURT: And Mr. Gopstein, can you, in sum, tell  
6 the Court what your evidence at trial would be if you were to  
7 proceed to trial in this case, either you or Mr. Harper or  
8 McFarlane.

9 MR. GOPSTEIN: Yes, Your Honor. If this case were  
10 to proceed to trial, the government's evidence would include  
11 e-mails which show J&F executives corresponding and  
12 co-conspirators to carry out the scheme, bank records and  
13 property showing the bribes, testimony of witnesses with  
14 knowledge of the scheme and travel records which show travel  
15 into the Eastern, through the Eastern District of New York in  
16 furtherance of the scheme.

17 THE COURT: Okay. Mr. Martins, pursuant to the plea  
18 agreement, you are waiving, the defendant is waiving venue, is  
19 that correct?

20 MR. MARTINS: Yes, Your Honor.

21 THE COURT: Does either side believe the Court needs  
22 to obtain additional information from Mr. Martins?

23 MR. GOPSTEIN: Not from the government, Your Honor.

24 THE COURT: Mr. O'Neil?

25 MR. O'NEIL: Nor the defendant, Your Honor.

1 THE COURT: Thank you.

2 Based on the information given to me both in writing  
3 and in person, and the representations of Mr. Martins and  
4 defense counsel as well as the government, I find that the  
5 defendant J&F Investimentos SA is aware of the nature of the  
6 charge and the consequence of its guilty plea and that the  
7 plea of guilty is a knowing and voluntary plea and is  
8 supported by an independent basis in fact containing the  
9 essential elements of the offense.

10 I, therefore, accept the plea of guilty of the  
11 defendant to the sole count of the information.

12 Now, I understand that the parties seek to waive the  
13 preparation of a presentence report and to proceed immediately  
14 to sentencing?

15 MR. GOPSTEIN: That is correct, Your Honor.

16 THE COURT: Ordinarily --

17 MR. O'NEIL: Yes, Your Honor.

18 THE COURT: -- I would go through a guidelines  
19 analysis to determine what is an appropriate sentence, but  
20 there is no need for me to do that in this case. This is a  
21 Rule 11(c)(1)(C) plea and having accepted the defendant's  
22 guilty plea pursuant to the agreement, under Rule 11(c)(1)(C),  
23 I am bound by the terms of the agreement with respect to the  
24 sentence to be imposed to the extent provided for under the  
25 agreement.

1 Does either side wish to be heard before I impose  
2 sentence in this case?

3 MR. GOPSTEIN: Not the government. Thank you, Your  
4 Honor.

5 MR. O'NEIL: Nor the defendant, Your Honor.

6 THE COURT: Does either side believe that I need to  
7 engage with the 3553(a) factors in this case?

8 MR. O'NEIL: No, Your Honor.

9 MR. GOPSTEIN: No, Your Honor.

10 THE COURT: Then I will proceed with imposing  
11 sentence.

12 Pursuant to the plea agreement, I impose the  
13 sentence provided for which is a fine as set forth in  
14 paragraph 22 of \$256,497,026.

15 Half of it, \$128,248,513, is payable to the United  
16 States. \$47 million is payable to the U.S. Treasury no later  
17 than ten business days after entry of judgment. The remaining  
18 balance of \$81,248,513 is payable within six months of the  
19 entry of judgment.

20 The other half of the fine in the amount of  
21 \$128,248,513 is payable to the Brazilian authorities as a  
22 criminal penalty pursuant to the Brazilian leniency agreement.

23 I am imposing a special assessment of \$400 which  
24 should be paid within ten days from today.

25 Is there anything else I need to impose, Counsel for

1 either side?

2 MR. O'NEIL: No, Your Honor.

3 MR. GOPSTEIN: No, Your Honor. Thank you.

4 THE COURT: Mr. Martins, on behalf of the defendant,  
5 you can appeal the defendant's conviction if you believe that  
6 the guilty plea was somehow unlawful or involuntary or if  
7 there is some other fundamental defect in the proceedings that  
8 was not waived by the defendant's guilty plea.

9 Under some circumstances, as I stated earlier, a  
10 defendant also has the right to appeal its sentence, however,  
11 a defendant may waive that right as part of a plea agreement  
12 and here, the defendant has entered into a plea agreement  
13 which waives its right to appeal or otherwise challenge its  
14 conviction or sentence. Such waivers are generally  
15 enforceable but if you believe the waiver itself is not valid,  
16 the defendant can present that theory to the appellate court.

17 Any notice of appeal must be filed within 14 days of  
18 the filing of the entry of judgment or within 14 days of the  
19 filing of a notice of appeal by the government. If requested,  
20 the Clerk will prepare and file a notice of appeal on behalf  
21 of the company. If the company for any reason cannot afford  
22 to pay the cost of an appeal, it certainly can ask for  
23 appellate counsel on appeal.

24 Is there anything else that needs to be resolved  
25 today with regard to this matter?

1 MR. GOPSTEIN: Not from the government. Thank you,  
2 Your Honor.

3 MR. O'NEIL: Nor the defendant, Your Honor.

4 MR. MARTINS: Nor the defendant.

5 THE COURT: Then that concludes the proceedings  
6 today and we are adjourned.

7 MR. O'NEIL: Thank you, Your Honor.

8 THE COURT: Have a good day, everyone.

9 MR. GOPSTEIN: Thank you, Your Honor.

10 (Matter concluded.)  
11  
12  
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16 \* \* \* \* \*

17  
18 I certify that the foregoing is a correct transcript from the  
19 record of proceedings in the above-entitled matter.

20 /s/ Charleane M. Heading                      October 15, 2020  
21 \_\_\_\_\_  
22 CHARLEANE M. HEADING                      DATE  
23  
24  
25